Tenaga Nasional Bhd v Bandar Nusajaya Development Sdn Bhd

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(F)-77–10 OF 2014 (J)
ZULKEFLI CJ (MALAYA), RICHARD MALANJUM CJ (SABAH AND SARAWAK), ABDULL HAMID EMBONG, ZAINUN ALI AND ABU SAMAH FCJJ
17 MAY 2016

Land Law — Assessment — Compensation — Appeal to state authority against award of compensation by award by district land administrator — Award revised and increased — Whether state authority allowed to revise earlier decision — Whether decision final — Whether state authority functus officio — Whether state authority has power to make second decision — Whether second decision against principle of res judicata — Whether ultra vires — Whether revised award ought to be set aside — Electricity Supply Act 1990 s 16(2)

The appellant had proposed a project which entailed entering into the parcels of land belonging to the respondent to erect transmission towers and leading cables. The district land administrator assessed the compensation at RM11,426,555.70 to be paid by the appellant to the respondent ('the award'). Aggrieved by the award, the respondent appealed to the state authority. The appeal was allowed and the award was increased to RM34,522,099 ('the first decision'). The appellant wrote to the Menteri Besar asking for a revision of the same. The state authority acceded to the appellant's request and the award made in the first decision was revised; reverting back to the award of RM11.4m but increased by 30% ('the second decision'). The appellant paid the sum awarded in the second decision to the respondent but a few years later, the appellant was notified that it had to pay the respondent the sum awarded in the first decision. The appellant objected to the notification to pay and informed the district land administrator that the first decision had already been superseded by the second decision. The state authority then set aside the second decision and came with the conclusion that the first decision was final ('the third decision'). The appellant filed an application for judicial review to quash the third decision. The High Court granted an order of certiorari quashing the third decision and upheld the second decision. The respondent appealed to the Court of Appeal against the decision of the High Court judge and the respondent's appeal was allowed. The first and third decision were upheld. Hence, the present appeal by the appellant.

Held, dismissing the appeal with costs:

(1) By virtue of s 16(2) of the Electricity Supply Act 1990 ('the Act'), the decision of the state authority in respect of an appeal against an assessment awarded by the district land administrator shall be final. In determining an appeal under s 16(2) of the Act, the state authority had acted in quasi-judicial function and discharged its function under the provision when it issued the first decision. The Act does not give the state authority any specific legal power to review its previous decision. The state authority was in fact functus officio with no power to make another or subsequent decision on the award of compensation. Therefore, the state authority had committed an unlawful act when it issued the second decision. The issuance of the second decision would then be against the principle of res judicata. When the second decision was issued, the state authority had acted without jurisdiction. Such decision was void and of no legal effect (see paras 49, 72, 74 & 76).

(2) The appellant's request to the Menteri Besar was made without such right or mechanism being allowed for in law. The appellant's request was tainted with illegality and the state authority's second decision was made ultra vires the Act. The act of ultra vires was confined to lack of jurisdiction in its ordinary sense. Clearly the state authority was not empowered by the Act to review its decision. There was no reason why such unlawful decision could not be set aside by the state authority. The state authority was justified in issuing the third decision. Such decision did not come within the purview of s 16(2) of the Act since its purpose was merely to set aside the second decision and to affirm the legal effect of the first decision (see paras 88, 91 & 93).

[Bahasa Malaysia summary

Perayu telah mencadangkan projek yang memerlukan untuk memasuki tanah yang dimiliki oleh responden bagi mendirikan menara pemancaran dan kabel utama. Pentadbir tanah daerah menaksirkan pampasan sebanyak RM11,426,555.70 untuk dibayar oleh perayu kepada responden ('award tersebut'). Tidak puas hati dengan award tersebut, responden merayu kepada pihak berkuasa negeri. Rayuan dan award ditingkatkan kepada RM34,522,099 ('keputusan pertama'). Perayu menulis kepada Menteri Besar memohon untuk semakan terhadapnya. Pihak berkuasa negeri bersetuju kepada permintaan perayu dan award dibuat di dalam keputusan pertama disemak; kembali semula kepada award sebanyak RM11.4 juta tetapi meningkat sebanyak 30% ('keputusan kedua'). Perayu membayar jumlah yang diawardkan di dalam keputusan kedua kepada responden tetapi beberapa tahun kemudian, perayu diberitahu bahawa ia terpaksa membayar responden jumlah yang diawardkan dalam keputusan pertama. Perayu membantah kepada pemberitahuan tersebut untuk membayar dan memberitahu pentadbir tanah daerah bahawa keputusan pertama telah digantikan dengan keputusan kedua. Pihak berkuasa negeri kemudiannya mengenepikan keputusan kedua

dan mencapai kepada keputusan bahawa keputusan pertama adalah muktamad ('keputusan ketiga'). Perayu memfailkan permohonan bagi semakan kehakiman untuk membatalkan keputusan ketiga. Mahkamah Tinggi membenarkan perintah certiorari membatalkan keputusan ketiga dan mengesahkan keputusan kedua. Responden merayu kepada Mahkamah Rayuan terhadap keputusan hakim Mahkamah Tinggi dan rayuan responden dibenarkan. Keputusan pertama dan ketiga disahkan. Maka, rayuan ini oleh perayu.

Diputuskan, menolak rayuan dengan kos:

(1) Mengikut s 16(2) Akta Bekalan Elektrik 1990 ('Akta'), keputusan pihak berkuasa negeri berkaitan rayuan terhadap penaksiran yang diawardkan oleh pentadbir tanah daerah adalah muktamad. Dalam menentukan rayuan di bawah s 16(2) Akta, pihak berkuasa negeri telah bertindak dalam fungsi quasi-kehakiman dan melepaskan fungsinya di bawah peruntukan apabila ia mengeluarkan keputusan pertamanya. Akta tidak memberikan pihak berkuasa negeri apa-apa kuasa undang-undang spesifik untuk menyemak keputusan terdahulunya. Pihak berkuasa negeri adalah sebenarnya functus officio dengan tiada kuasa untuk membuat keputusan lain atau selanjutnya atas award pampasan tersebut. Oleh itu, pihak berkuasa negeri telah melakukan tindakan salah di segi undang-undang apabila ia mengeluarkan keputusan kedua tersebut. Pengeluaran keputusan kedua akan bertentangan prinsip res judicata. Apabila keputusan kedua dikeluarkan, pihak berkuasa negeri telah bertindak tanpa bidang kuasa. Keputusan tersebut adalah batal dan tidak mempunyai kesan undang-undang (lihat perenggan 49, 72, 74 & 76).

(2) Permintaan perayu kepada Menteri Besar dibuat tanpa hak atau mekanisma sedemikian dibenarkan dari segi undang-undang. Permintaan perayu adalah dicemar dengan ketaksahan dan keputusan kedua pihak berkuasa negeri dibuat ultra vires Akta. Tindakan ultra vires terhad kepada ketiadaan bidang kuasa dalam maksud biasanya. Jelas pihak berkuasa negeri tidak diberi kuasa oleh Akta untuk menyemak semula keputusannya. Tidak terdapat alasan mengapa keputusan yang salah di sisi undang-undang sedemikian tidak dapat diketepikan oleh pihak berkuasa negeri. Pihak berkuasa negeri berjustifikasi dalam mengeluarkan keputusan ketiga. Keputusan sedemikian tidak termasuk dalam skop s 16(2) Akta kerana tujuannya hanya untuk mengenepikan keputusan kedua dan untuk mengesahkan kesan undang-undang keputusan pertama (lihat perenggan 88, 91 & 93).]

Cases referred to

Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor [2011] 2 MLJ 573, FC (refd)

Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors [1995] 2 MLJ 549, FC (refd)

Chan Kwai Chun v Lembaga Kelayakan [2002] 3 MLJ 550, CA (refd)
De Verteuil v Knaggs [1918] AC 557, PC (refd)
Eu Finance Berhad v Lim Yoke Foo [1982] 2 MLJ 37, FC (refd)
F Hoffmann-La Roche & Co AG and others v Secretary Of State for Trade And Industry [1975] AC 295, HL (refd)
GEC Ltd v Price Commission [1975] ICR 1, CA (refd)
Grant v Teacher's Appeals Tribunal and another [2006] UKPC 59, PC (refd)
Ismail bin Abdullah v Tenaga Nasional Berhad [2010] MLJU 1616; [2011] 3 CLJ 770, CA (refd)
Mak Sik Kwong v Minister of Home Affairs, Malaysia [1975] 2 MLJ 168 (refd)
Minister for Immigration and Multicultural Affairs v Bhardwaj [2002] 209 CLR 597, HC (refd)
Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor [1981] 2 MLJ 199, FC (refd)
Puah Bee Hong & Anor v Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal [1994] 2 MLJ 601, SC (refd)
R v Senate of The University of Aston, Ex parte Roffey and Another [1969] 2 All ER 964, QBD (refd)
RR Verma and Ors vs Union of India and Ors 1980 AIR 1461, SC (refd)
Ridge v Baldwin and others [1963] 2 All ER 66, HL (refd)
Rootkin v Kent County Council [1981] 2 All ER 227, CA (refd)
S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204, FC (folld)
Sarawak Electricity Supply Corporation v Wong Ah Suan [1980] 1 MLJ 65, FC (refd)
Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union [1995] 2 MLJ 317; [1995] 2 CLJ 748, CA (refd)
UDA Holdings Bhd v Koperasi Pasaraya (M) Bhd and other appeals [2009] 1 MLJ 737, FC (refd)
Wee Choo Keong v MBF Holdings Bhd & Anor [1995] 3 MLJ 54, SC (refd)
Wong Ah Suan v Sarawak Electricity Supply Corporation & Anor [1982] 2 MLJ 89, PC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 78(1)
Electricity Supply Act 1990 s 16, 16(1), (2)
National Land Code s 263

Appeal from: Civil Appeal No J-02–2968–11 of 2011 (Court of Appeal, Putrajaya)

Cyrus Das (Azlan Sulaiman and David Mathew with him) (Azmi & Assoc) for the appellant.

R Vatsala (Dennis Khong and Raneesha Thayalan with her) (Zain & Co) for the respondent.

Zainun Ali FCJ:

[1] This is a unanimous decision and this judgment is prepared and delivered pursuant to s 78(1) of the Courts of Judicature Act 1964, as our learned brother, Justice Abdull Hamid Embong FCJ has since retired.

QUESTIONS OF LAW

[2] The appellant/applicant was granted leave to appeal to this court on 8 October 2014 on the following questions of law:

(1) whether the word 'final' in s 16(2) of the Electricity Supply Act 1990 prevents the state authority from reconsidering, reviewing or revising its earlier decision?

(2) whether the word 'final' in s 16(2) applies appropriately only to the party dissatisfied and not the decision-maker?

(3) whether it is permissible in law for the state authority to revise its award on compensation after the same had been duly implemented in that the compensation sum stated therein had been duly paid to the landowner? and

(4) whether it is open for the state authority to set aside a revised award that has already been implemented in the absence of any challenge from the landowner to the revised award or without affording an opportunity to the appellant ('TNB') to address it on its intended action?

INTRODUCTION

[3] At the High Court, the learned High Court judge allowed the appellant's application for an order of certiorari to quash the decision of the district land administrator Johor Bahru contained in a letter dated 23 November 2010, which had, inter alia, ordered or directed the appellant to pay the respondent the compensation sum of RM34,522,099. On appeal, the Court of Appeal allowed the respondent's appeal and set aside the order of the High Court and hence the appeal herein.

FACTS

[4] The respondent was the owner of 26 parcels of land in Johor ('the said lots'). In 1996, the appellant (TNB) proposed a project known as 'Projek Talian Penghantaran Elektrik dari PMU Gelang Patah Ke PMU Perling (2 rantai) dan dari PMU Gelang Patah ke PMU Tg Kupang (3 rantai), Johor'.

The project involved the appellant entering into, inter alia, the said lots and erecting transmission towers and leading cables through it under the Electricity Supply Act 1990 ('the Act').

[5] Pursuant to an enquiry held under s 16(1) of the Act, the district land administrator on 17 October 1995 and 17 June 1997 assessed the compensation to be paid by the appellant to the respondent at RM11,426,555.70 ('the district land administrator's award').

[6] Aggrieved by the district land administrator's award the respondent appealed to the state authority under s 16(2) of the Act.

[7] The appellant was informed of the respondent's appeal by the district land administrator's dated 8 January 2001. In the same letter, the appellant was also invited to put forward evidence and/or a valuation for consideration in the respondent's appeal to the state authority.

DECISION OF THE STATE AUTHORITY

The first decision

[8] Following the respondent's appeal, the state authority acceded to the appeal of the respondent and increased the district land administrator's award from RM11.4m to RM34,522,099.

This decision of the state authority dated 6 February 2002 is hereafter referred to as the first decision.

The second decision

[9] The appellant being dissatisfied with the first decision, wrote to the Menteri Besar (by letter dated 14 August 2002), asking for a revision of the same.

[10] The state authority acceded to the appellant's request and thereafter it revised the award made in the first decision.

[11] It reverted to the district land administrator's original award of RM11.4m but increased it by 30% more. This revised award is now referred to as the 'second decision'.

[12] The appellant was informed of the 'second decision' by the district land administrator's letter dated 25 June 2008. In the same letter, the district land

administrator notified and directed the appellant to pay the balance sum as shown in the second decision. Acting on the said notification, the appellant paid the sum awarded in the second decision, to the respondent.

The third decision

[13] However two years later, the district land administrator by letter of 18 March 2010 notified the appellant that it would now have to pay the respondent the sum awarded in the state authority's first decision (the amount of RM34,522,099). The district land administrator contended that since the appellant had already paid the sums awarded in the second decision they would have to pay the difference ie (RM19,667,576.52) to the respondent.

[14] The appellant objected to the notification to pay and it informed the district land administrator that the first decision had already been superseded by the second decision, since the latter had been fully implemented by the appellant.

[15] Following the appellant's complaint, the state authority on 26 October 2009 then issued its third decision. The third decision declared that the state authority's second decision is set aside and that the first decision is final ('muktamad'). By the DLA's letter dated 23 November 2010, the appellant was informed of the third decision.

APPLICATION FOR JUDICIAL REVIEW

[16] Aggrieved by the third decision of the state authority, the appellant then filed their application for judicial review to quash the third decision of the state authority. The district land administrator was named as the first respondent whilst the respondent was the second respondent in the action.

[17] On 19 October 2011, the High Court granted an order of certiorari quashing the state authority's third decision and upheld the state authority's second decision.

[18] The respondent then appealed to the Court of Appeal against the decision of the learned High Court judge. On 2 April 2013, the Court of Appeal allowed the respondent's appeal. It upheld the state authority's first decision and also upheld the third decision since the latter was merely an affirmation of the first decision.

[19] Thus the appellant's appeal before this court.

ISSUES IN THE COURT OF APPEAL

[20] On 2 April 2013, when the Court of Appeal allowed the respondent's appeal, it held that:

> [19] We agree with the appellant that the decision of the state authority under s 16(2) of the said Act is final in that there is no power on the part of the state authority to review its own decision after it had made its decision under the said subsection. As said by the Court of Appeal in *Ismail Abdullah*:
>
> > The compensation as reviewed and awarded by the state authority — on appeal from the award of the district land administrator — was final and unappealable. This was clear from the mandatory words 'shall be final' in s 16(2) of the ESA.
>
> [20] In fact the learned judge herself recognised that the state authority was not empowered under the said Act to review its own decision when she made the following observation:
>
> > Furthermore, s 16(2) does not empower the SA to entertain appeal after appeal — otherwise it will render the mandatory provision that 'its decision shall be final' nugatory and of no effect.
>
> [21] Thus the respondent's contention that the second decision was valid as it had not been challenged and quashed was clearly untenable. On the contrary as the state authority was not empowered to make the second decision, the second decision was by virtue thereof null and void. Even if it can be argued that the state authority's decision under s 16(2) of the said Act can be challenged by way of judicial review, the respondent did not take any steps to do so but chose instead to appeal (against the first decision) to the Menteri Besar, a procedure not provided for under the said Act.

[21] The Court of Appeal also made a finding that the learned High Court judge had failed to take into consideration a letter dated 8 January 2001 from the district land administrator. In effect the appellant was informed of the respondent's appeal to the state authority and to file new evidence if any. Therefore the appellant's complaint that it was not given the right to be heard was merely an afterthought. In any event, all the evidence had been ventilated before the district land administrator at the inquiry stage. It is evident that the state authority had all the material before it to enable it to come to a fair and proper decision. The Court of Appeal referred to the Federal Court decision in *Sarawak Electricity Supply Corporation v Wong Ah Suan* [1980] 1 MLJ 65, which held that:

> For the observation of the *audi alteram partem* rule a number of authorities has laid down that so long as an adequate opportunity is given to the affected party to make any relevant statement he may want to make or to answer any statement to his prejudice, no particular form of procedure, where the relevant statute, as in this case, does not prescribe any special form of hearing, needs to be followed. The substance and not the form is the important thing.

[22] We are mindful that the above Federal Court decision was overturned by the Privy Council (see *Wong Ah Suan v Sarawak Electricity Supply Corporation & Anor* [1982] 2 MLJ 89).

[23] Nevertheless the Privy Council allowed the appeal based on the factual circumstances of the case. This was what it said:

> These being Their Lordship's conclusions on the factual submissions, it is unnecessary to consider the point of law. Their Lordships think it is impossible from the facts of the case to know what the Government-in-Council would have decided, had the plaintiff below given an opportunity to develop orally or in writing his full case before the decision was taken. It cannot be said with any certainty that the decision would have been the same.

[24] On this issue, we refer to the judgment of the Federal Court in *Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor* [2011] 2 MLJ 573. In that case, the Federal Court approved the authority of *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204 at pp 210–211, where His Lordship Eusoffee Abdollcader J (as His Lordship then was) said that:

> The rules of natural justice vary in content and ambit according to the circumstances and context ... approved the proposition that the courts should not fly in the face of a clearly evinced Parliamentary intention to exclude the operation of the *audi alteram partem* rule.
>
> The Legislature can by clear words exclude the principles of natural justice in the absence of specific constitutional guarantees. In an appeal from New Zealand the Privy Council approved of the idea that natural justice could be effectively excluded by a legislative code ... stating that it is not 'the function of the court to redraft the code' and referring with approval to the decision of the High Court of Australia ... which held in effect that it is not for the court to amend the statute by engrafting upon it some other provision that it might think more consonant with a complete opportunity for an aggrieved person to present his views and to support them by evidentiary material.

[25] In the present case, s 16(2) of the Act merely prescribes that an appeal against the assessment of the district land administrator must be filed within 21 days from the assessment date. The Act is silent as to any special form of hearing which is required to be followed for the purposes of the appeal. Applying the principle in *S Kulasingam*, the *audi alteram partem* rule ought not to be read into the provision. From the records it is also shown that the representatives of both parties had already attended the initial inquiry before the district land administrator and were given a chance to be heard.

[26] In our view since the parties had already ventilated their respective arguments at the inquiry stage and no new evidence was shown by the

appellant (when it had the opportunity to do so), the appellant's argument that they were not heard by the state authority could not hold. Thus in this regard, the appellant's contention that they were not informed of the respondent's appeal under s 16 of the Act is unsustainable.

THE APPELLANT'S CASE

[27] It is the appellant's case that the words 'shall be final' in s 16(2) of the Act, apply in the context of the section to the 'person aggrieved' who has appealed and not the state authority who has made the decision.

[28] In any case, the appellant contended that there is nothing in s 16 that would hinder the application of the rule in administrative law that an administrative decision-maker may recall, review or reconsider a decision it has made so long as no party has yet acted on it or altered its position in reliance of it.

[29] The appellant relied on the opinion of Prof MP Jain in his book on *Administrative Law of Malaysia & Singapore* (4th Ed) at p 2 where the author said, inter alia, that:

> The authority making an administrative decision is entitled to change it after a reconsideration. The principle of res judicata does not apply to such a decision ...

[30] The appellant also relied on the oft-quoted observation made by Lord Reid in *Ridge v Baldwin and others* [1963] 2 All ER 66 at p 80 that a decision-maker has the right to reconsider his decision because he may have acted hastily.

[31] The appellant's case is strengthened when Lord Reid's observation of a right to recall and review (in *Ridge v Baldwin*) has been consistently followed in a series of cases in the Commonwealth and taken as a trite principle of administrative law (see cases such as *R v Senate of The University of Aston, Ex parte Roffey and Another* [1969] 2 All ER 964 and recently, *Grant v Teacher's Appeals Tribunal and another* [2006] UKPC 59 and *Minister for Immigration and Multicultural Affairs v Bhardwaj* [2002] 209 CLR 597.

[32] Counsel for the appellant submitted that the state authority's decision under s 16(2) of the Act does not prevent the state authority from reconsidering its earlier decision; that the word 'final' in s 16(2) applies only to the 'person aggrieved' who has appealed and not to the state authority who has made the decision.

[33] The appellant went on to say that the state authority was entitled to amend or rectify its earlier decision at any time before the award is implemented.

[34] However the appellant contended that the right to recall or review may not be exercised *once the decision is communicated and acted upon*. The appellant applied the test of the doctrine of estoppel in substantiating this contention (see *Rootkin v Kent County Council* [1981] 2 All ER 227). (Emphasis added.)

[35] In the present case, the appellant contended that the second decision had become operative since the decision was duly communicated to the landowner affected, and the compensation was paid (by the appellant) and received by them. The appellant's *coup de grace* is that by the application of the above principle of administrative law, the state authority could thereafter no longer revisit or review its earlier decision and revise the award at will. The appellant contended that the full implementation of the state authority's decision (the second decision) brought about a completion of the appeal process, rendering the state authority functus officio. Are these contentions tenable? We shall see.

THE RESPONDENT'S CASE

[36] The respondent submitted that based on the provision of s 16(2) of the Act and the Court of Appeal's decision in *Ismail bin Abdullah v Tenaga Nasional Berhad* [2010] MLJU 1616; [2011] 3 CLJ 770, the decision of the state authority is final. The Court of Appeal held that:

> Here we have s 16(2) of the Electricity Supply Act 1900 which states that the decision of the state authority shall be final and effect must be given to it. Public policy too demands that finality to the decision of the state authority be recognised.

[37] It therefore follows that any subsequent decision which was inconsistent with the first decision was null and void. Thus the third decision which affirmed the first decision was wrongly quashed by the High Court. It was also averred that the Act does not provide any right or mechanism for further appeals from the state authority's decision made in this section. It is settled that a right of appeal exists only if the law provides for it (see *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549).

OUR DECISION

[38] It is pertinent to now look at s 16 of the Act. It provides as follows:

> 16(1) The amount of compensation, if any, payable under section 11 or 13 shall be assessed by the district land administrator after such enquiry as he shall deem sufficient. The assessment shall be substantially in the form set out in the Third

Schedule: Provided further that no compensation shall be payable by the licensee in respect of any tree within fifty feet of the centre line of any road constructed or maintained by the State Government or by any local authority unless it is proved that the tree was in existence prior to the construction of the road.

16(2) Any person aggrieved with the district land administrator's assessment may within twenty-one days after the assessment appeal to the state authority whose decision shall be final.

QUASI-JUDICIAL DECISION

[39] At the outset, it is crucial for this court to examine the nature of administrative decision making powers of the state authority under s 16(2) of the Act. This underpins the determination of the appeal before us.

[40] A perusal of s 16(2) of the Act shows that a state authority in determining an appeal under the said provision is performing a quasi-judicial function and not a purely ministerial or administrative act.

[41] A quasi-judicial function stands in between a judicial and administrative function. A quasi-judicial decision consists of findings of facts and applying administrative policy. Where a statutory authority is empowered under a statute to do any act which affects the rights of individuals, the authority is exercising a quasi-judicial function and is thus required to act judicially.

[42] This principle is lucidly expressed by Abdoolcader J (as His Lordship then was) in *Mak Sik Kwong v Minister of Home Affairs, Malaysia* [1975] 2 MLJ 168 when His Lordship said that:

I think it is clear that an act or decision may be held to be of a judicial character if it imposes obligations upon or affects the rights of individuals. These rights or duties need not be in any sense private rights or duties of the individuals affected; it is sufficient that their rights as citizens should be in jeopardy.

...

A purely administrative or executive function is one where there is no duty to afford a hearing to the parties interested, and where the decision can be made on the basis of policy considerations only.

Even in arriving at an administrative decision, there may be a judicial or quasi-judicial interlude, and at that stage the deciding authority will have to act in a quasi-judicial manner — a situation resolving in effect into a hybrid mixture of administrative and quasi-judicial functions where the two elements are intermingled closely.

[43] Whether an administrative body or a tribunal is exercising a quasi-judicial function is governed by the provisions in the empowering

statute. In *MP Jain & SN Jain Principles of Administrative Law — An Exhaustive Commentary on the subject with case law references (Indian & Foreign) Vol 1* (6th Ed — reprint 2010), at p 310 the authors expressed the view that:

> A quasi-judicial function has been termed to be one which stands midway a judicial and an administrative function. The primary test is as to whether the authority alleged to be a quasi-judicial one, has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in the affirmative, the authority would be deemed to be quasi-judicial, and if the reply is in the negative, it would not be. The dictionary meaning of the word 'quasi' is 'not exactly'. It follows, therefore, that an authority is described as quasi-judicial when it has some of the attributes or trappings of judicial functions, but not all.

[44] Based on s 16 of the Act, the state authority is conferred a power to adjudicate an appeal against the decision of the district land administrator. In determining the rights of the parties on the amount of assessment payable, the state authority is required to act judicially in considering the facts and evidence presented before it. The administrative function exercised by a state authority is thus quasi-judicial in nature.

The term 'shall be final' in s 16(2) of the Act

[45] As alluded to above, the effect of the term 'shall be final' in s 16(2) of the Act was considered by the Court of Appeal in the case of *Ismail bin Abdullah v Tenaga Nasional Berhad* [2010] MLJU 1616; [2011] 3 CLJ 770. This case supports the respondent's contention that a decision under s 16(2) of the Act is final.

[46] The above case involved an appeal under s 16(2) of the Act against an award of compensation ordered by the district land administrator. The respondent refused to pay the increased compensation sum contained in the decision of the state authority leading to the appellant's suit for recovery. Summary judgment was granted by the deputy registrar against the respondent but this decision was reversed on appeal to the judge in chambers.

[47] On appeal by the respondent, the learned judicial commissioner in the High Court, inter alia, held that the appellant had compromised his position by accepting the compensation sum awarded by the district land administrator before the appeal to the state authority was heard and that this was said to be a triable issue. The High Court also held that the award by the state authority was excessive. The High Court then set aside the summary judgment.

[48] However the Court of Appeal allowed the appellant's appeal. It was held that in determining the appellant's claim for recovery of the award issued by the state authority, effect must be given to the clear provisions of s 16(2).

Consequently, the compensation as reviewed and awarded by the state authority — an appeal from the award of the district land administrator was final. It was also held that the only recourse available was for the respondent to challenge the decision of the state authority in court but which it failed to do. The respondent therefore had no legal defence to the recovery suit filed by the appellant. Summary judgment was entered against the respondent.

[49] We agree with the Court of Appeal in *Ismail Abdullah* on the construction of s 16(2) in that there is no ambiguity in the language of s 16(2) of the Act. For it is clear that the decision of the state authority in respect of an appeal against an assessment awarded by the district land administrator 'shall be final'.

[50] It is also pertinent to note that the above view coincides with the established principle of law, that it is the primary duty of the court to give effect to the intention of the legislature in the words used by it in their natural and ordinary sense. This was also the position taken by this court in *Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor* [2011] 2 MLJ 573 when James Foong FCJ (as His Lordship then was) said that:

> I wish to reiterate that it is the court's duty to give effect to the provisions of the Constitution and statutory law without attempting to modify and qualify it, particularly when there is no ambiguity.

[51] We are of the view that the normal effect of a finality clause is to prevent any appeal. Such a provision is important in crystallising the position that the authority has to decide only once and thereafter is without jurisdiction in the matter. In other words, such a decision is final and irrevocable.

[52] In agreeing with the decision of *Ismail Abdullah*, we would also say this — that the clear words of s 16(2) call for a sensible approach since public policy demands that finality to the decision of the state authority must be accepted and acknowledged.

[53] We must also say that the law on the finality of the decision of the state authority under s 16(2) must not be misunderstood. Although the decision of the state authority is final, the appellant has a right to resort to the supervisory jurisdiction of the court to examine the decision of the state authority as to whether there is illegality, procedural impropriety or irrationality.

[54] In this regard, we refer to the decision of Eusoffee Abdoolcader J (as His Lordship then was) in *Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor* [1981] 2 MLJ 199. In that case, His Lordship applied with approval the following passage in the judgment of Lord Denning

MR in *GEC Ltd v Price Commission* [1975] ICR 1 at p 12 who observed that:

> Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be *final*. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves make the original findings of fact. They will not themselves embark on a rehearing of the matter: see *Healey v Minister of Health* [1955] 1 QB 221. But, nevertheless, the courts will, if called upon, act in a *supervisory* capacity. They will see that the decision-making body acts fairly: see *Re HK (An infant)* [1967] 2 QB 617 at p 630; *Rv Gaming Board for Great Britain, ex p Benaim and Khaida* [1970] 2 QB 417. The courts will ensure that the body acts in accordance with the law. (Emphasis added.)

[55] It is noted that in *Ismail Abdullah*, the Federal Court had allowed the respondent's appeal and reversed the decision of the Court of Appeal. The view of this court on the effect of the finality clause in s 16(2) of the Act was not disclosed due to the absence of grounds of judgment.

[56] Nevertheless the setting aside of the order of summary judgment granted by the Court of Appeal does not preclude this court from disregarding the view given by the Court of Appeal on the interpretation of s 16(2) of the Act. It must be noted that the order of this court remitting the case to the High Court for trial merely proved the existence of triable issues.

[57] In any event, the issues ventilated before this court in *Ismail Abdullah* have no bearing on the present case. In the present case, the finality clause in s 16(2) of the Act is raised in the context of the state authority's power to review its own decision. But, in *Ismail Abdullah*, the finality clause in s 16(2) referred to the right of a party challenging the legality of the state authority's decision collaterally, in a recovery proceeding brought against it. This is evident from the main question posed before the Federal Court which is:

> Whether the appellant is precluded from challenging the legality of the decision of the state authority under s 16(2) of the Electricity Supply Act 1990 ('the Act) in proceedings brought to enforce the decision?

[58] In view of the above, it is thus clear that, the first decision of the state authority which determined the respondent's appeal was final. The state authority was not empowered to reconsider its first decision and issue a second decision. Thus in the absence of any application by the appellant for the court to exercise its supervisory function, the first decision stands and enjoys full legal effect.

ADMINISTRATIVE POWER TO REVIEW DECISION

[59] It was further submitted by counsel for the appellant that the word 'final' in s 16(2) does not apply to the state authority, it being the administrative decision maker. The crux of the appellant's appeal is that s 16(2) of the Act does not impede an administrative decision-maker from recalling, reviewing or reconsidering a decision it has made so long as no party has yet acted on it or altered its position in reliance of it (*Rootkin* and *RR Verma and Ors vs Union of India and Ors* 1980 AIR 1461). But is this proposition correct?

[60] We find that the authorities relied on by counsel for the appellant on the above issue are wholly misplaced. It must be distinguished that in the above cases the administrative decisions were issued by the authorities in the performance of their *ministerial* or *administrative* functions. (Emphasis added.)

[61] It is trite law that an 'administrative' decision is dictated to by policy and expediency. In fact, an administrative authority should remain free to alter its policies or decisions in administrative matters from time to time, as to effectuate an efficient administration (*RR Verma and Ors vs Union of India and Ors* 1980 AIR 1461). But this takes on a different dimension when the power is a power to decide questions affecting legal rights. This power is adjudicative in nature. Once an adjudicative power is validly exercised, the decision arrived at is irrevocable and cannot be recalled or revised.

[62] Counsel for the appellant also relied on the general statement of law in *Ridge v Baldwin* where Lord Reid said:

> I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present his case, then its later decision will be valid.

[63] In support, counsel for the appellant also referred to the court decisions in *De Verteuil v Knaggs* [1918] AC 557, *Aston University*, *Grant* and *Bhardwaj* which applied the principle in *Ridge v Baldwin*.

[64] It is seen that the series of cases have similar factual matrix. They involved administrative decisions which were vitiated by failure to observe the requirement of a fair hearing. The decision is therefore ultra vires and void. The principle in *Ridge v Baldwin*, illustrates that an administrative authority which fails to observe the *audi alteram partem* rule in its decision making has committed an error in jurisdiction. It is on this basis that the authority is entitled to revise its decision so as to correct such error.

[65] It must be observed that in modern administrative cases, the above

principle in *Ridge v Baldwin* is often retained as a general principle of law. Emphasis was given that the exercise of a power to review must always be in conformity with the scheme of the statute.

[66] An example can be seen in the judgment of Gleeson CJ in the case of *Bhardwaj*. After referring to the statement of Lord Reid in *Ridge v Baldwin*, His Lordship observed that:

> That general proposition *must yield to the legislation under which a decision-maker is acting.* And much may depend upon the *nature of the power* that is being exercised and of the *error* that has been made.

[67] In His Lordship's view, it is paramount that an administrative decision can only be reviewed by an authority if only relevant statute permits such review. In the same judgment His Lordship continued in stating that:

> The question is whether the statute pursuant to which the decision-maker was acting manifests an intention to permit or prohibit reconsideration in the circumstances that have arisen. That requires examination of two questions. Has the tribunal discharged the functions committed to it by statute? *What does the statute provide, expressly or by implication, as to whether, and in what circumstances, a failure to discharge its functions means that the tribunal may revisit the exercise of its powers* or, to use the language of Lord Reid, reconsider the whole matter afresh? (Emphasis added.)

[68] It is our view that the above principle in *Ridge v Baldwin* must not be construed rigidly as to defeat legislative intent. Its application must always be in conformity with the provisions of the empowering statute. Secondly, the nature of the function performed by the authority and the error involved in the decision making process must also be considered in determining when such power to review would arise.

[69] We are of the view that subject to a power to correct a slip or an error of expression, a decision arrived at in a quasi-judicial function cannot be changed by the decision-making body unless it has specific legal power to review its own decision.

[70] The reason must also lie in the nature and the decision making process of this power. A decision arrived at in a quasi-judicial function is based on the merits of the case upon hearing parties. Such a decision is binding upon the parties. Therefore it operates as res judicata in later proceedings raising the same issue between the same parties.

[71] The principle of res judicata is applicable to decisions made in a quasi-judicial capacity to prevent the reopening of issues already decided. The law is correctly stated by Professor MP Jain in the book *Administrative law of*

Malaysia and Singapore (4th Ed) at p 368 where he said:

> The authority making an administrative decision is entitled to change it after a reconsideration. The principle of *res judicata* does not apply to such a decision. Res *judicata* is, by definition, a doctrine confined to decisions judicially decided. For example, if a licensing officer refuses to give a licence to a party in the first instance, the officer may later decide to issue the licence after reconsidering the matter. A tribunal it seems may even revoke a prior determination on account of irregularity and re-determine a matter. *But a decision arrived at in an adjudicative capacity after hearing the parties cannot be changed by the decision-making body unless it has specific legal power to review its own decisions.* An adjudicative power is to be exercised but once, for it is of the essence of judicial power that disputes between parties be finally settled. The principle of *res judicata applies to an adjudicatory* decision. (Emphasis added.)

[72] In the circumstances of this case, the state authority in determining an appeal under s 16(2) of the Act had acted in a quasi-judicial function. The state authority had discharged its function under s 16(2) of the Act when it issued the first decision. The Act does not give the state authority any specific legal power to review its previous decision. The state authority was in fact functus officio with no power to make another or subsequent decision on the award of compensation. In the circumstances, the state authority had committed an unlawful act when it issued the second decision.

[73] Having regard to the binding effect of the first decision, the issuance of the second decision would be against the principle of res judicata.

[74] We are of the view that when the state authority issued the second decision, it had acted without jurisdiction (in the sense of not being entitled to review its previous decision) and therefore such decision was void and of no legal effect.

THE EFFECT OF A VOID DECISION

[75] It was held by the Court of Appeal in *Chan Kwai Chun v Lembaga Kelayakan* [2002] 3 MLJ 550 that a decision is regarded as void if it is ultra vires. A void decision is no decision at all and ought to be disregarded.

[76] Applying the above principle, the state authority had acted without jurisdiction when it made the second decision. The second decision is a nullity. It can have no legal effect. Consequently the full implementation of the second decision by the appellant was therefore void.

[77] Judicial pronouncements have always been clear that a court order holds good and is valid until it is set aside (see *Puah Bee Hong & Anor v Pentadbir*

Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal [1994] 2 MLJ 601).

[78] In *Puah Bee Hong*, the land administrator allowed sale of the property despite there being an order of stay made by the High Court. It was held that the land administrator had disobeyed the order of stay which was then still in force, when he proceeded with the auction. The land administrator had therefore acted illegally and the public auction was in consequence, null and void. The Supreme Court in *Puah Bee Hong*, inter alia, said that:

> We are of the considered view that an order of a Superior Court such as the High Court, even if it is, an example, an order obtained ex parte or a default judgment; until it is set aside, must be obeyed by everyone whether its validity is challenged or not, and 'it is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction' to obey it unless and until the order is discharged, per Romer LJ in *Hadkinson v Hadkinson* ...
>
> ... One of the reason is that such a Superior Court must be presumed to have the jurisdiction to make an order which it has made. Every order made by a Superior Court must be regarded as an order of competent jurisdiction.

[79] The Supreme Court made a similar pronouncement in *Wee Choo Keong v MBF Holdings Bhd & Anor* [1995] 3 MLJ 54, a case involving contempt proceedings and issues of disobedience to court orders.

[80] A question then arises. Whether the above principle is extended to administrative decisions?

[81] The court's observation in *Puah Bee Hong* encapsulated the legal position succinctly. The court by way of obiter stated that:

> As distinct from an order of a Superior Court, on the other hand, an order of an inferior tribunal can be challenged collaterally as regards its validity in any proceedings in which such validity becomes relevant, without the need to file proceedings first for the very purpose of having it set aside. Generally (but not in all cases), such an order could be disobeyed with impunity without the need for proceedings to set it aside, as was done eg in *Eu Finance Bhd v Lim Yoke Foo*, when a land administrator there, of his own motion, made a second order for sale of some charged land under similar provisions of the National Land Code 1965 which was held to be a nullity or no order at all.
>
> Abdoolcader J, in delivering the judgment of the Federal Court observed at p 39 ... 'such an order can be successfully attacked in collateral proceedings: it can be disregarded and impeached in any proceedings before any court, or tribunal and whenever it is relied upon ...'.

[82] In view of the above, unlike court orders, administrative decisions can be challenged in a collateral proceeding. The above authority also determined

that an administrative order which is void 'could be disobeyed with impunity without the need for proceedings to set it aside'.

[83] For completeness, it is instructive to also look at the ratio in *Eu Finance Berhad v Lim Yoke Foo* [1982] 2 MLJ 37. The effect of functus officio and void orders were apparent in that case. The issue before the court was the legal effect of the second order of sale issued by the land collector in respect of a property. It was held that when the collector made the first order under s 263 of the National Land Code, he was functus officio with no power to make another or subsequent order of sale under s 263. It was held that the second order was no order at all and was a nullity and devoid of any effect.

[84] The facts in the present case are almost similar to the facts in *Eu Finance*. However, in the present case, the state authority upon realising that the second order was made without jurisdiction had acted further to set aside the second decision so as to affirm the first decision. This was done through the third decision. The position taken by the state authority was also communicated to the appellant by the district land administrator's letter dated 23 November 2010.

[85] If the respondent were to uphold the second decision, such an act was ultra vires the Act, being contrary to s 16(2) of the Act. But, while this unlawful administrative decision had no effect in law, it clearly existed in fact. By reason of the first decision which is subsisting and of full legal effect the matter was also made res judicata. The second decision was a nullity incapable of any legal consequences and therefore the state authority was justified in setting aside the second decision in order to affirm its first decision.

[86] An interesting dimension to the effect of void administrative decision is the approach taken by Zulkefli FCJ in *UDA Holdings Bhd v Koperasi Pasaraya (M) Bhd and other appeals* [2009] 1 MLJ 737. Zulkefli FCJ in his dissenting judgment held that *administrative orders* are presumed valid until set aside by a court of law. After referring to the decision of the House of Lords in *F Hoffmann-La Roche & Co AG and others v Secretary Of State for Trade And Industry* [1975] AC 295 His Lordship held that:

> It is an established rule of interpretation that statutory instruments or administrative orders are presumed valid until set aside by a court of law.

[87] It must be highlighted that in administrative decision-making, excess of jurisdiction can arise in many ways. It cannot be denied that the above proposition applies to an administrative decision which was made ultra vires due to a breach of the rule of natural justice.

[88] But in the context of the present case, the act of ultra vires was confined to lack of jurisdiction in its ordinary sense. Clearly, the state authority was not empowered by the Act to review its decision. The issue was also res judicata. In the above circumstances, there can be no reason why such unlawful decision could not be set aside by the state authority. The state authority was justified in issuing the third decision.

CONCLUSION

[89] In view of the foregoing we find that the state authority was functus officio upon having heard the appeal and delivering its first decision in the exercise of its quasi-judicial powers. It has no power to review its own decision and alter it thereafter. It had committed an error of law that went to jurisdiction in subsequently reconsidering the matter and making a contrary decision.

[90] It is trite law that a decision-making authority exercising a quasi-judicial function has no jurisdiction to commit an error of law or contravene the law from which it derives its decision-making powers (see *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union* [1995] 2 MLJ 317; [1995] 2 CLJ 748).

[91] It is also our view that the appellant's request to the Menteri Besar was made without such right or mechanism being allowed for in law. The appellant's request was therefore tainted with illegality and the state authority's second decision was made ultra vires the Electricity Supply Act 1990.

[92] The dynamics would have differed had the appellant challenged the state authority's award by way of judicial review. Instead it chose an unprecedented path by seeking redress through the Menteri Besar.

[93] Clearly the state authority's second decision was made without jurisdiction and therefore null and void. We are of the view that the state authority was justified in issuing the so called 'third decision'. Such decision did not come within the purview of s 16(2) since its purpose was merely to set aside the second decision and to affirm the legal effect of the first decision.

[94] For the above reasons Question (1) is answered in the affirmative, Question (2) in the negative; Questions (3) and (4) in the affirmative. We therefore dismiss this appeal with costs.

Appeal dismissed with costs.

Reported by Afiq Mohamad